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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,521	02/21/2002	Luciano Mondani	25-335	4703

7590 04/07/2003

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EXAMINER

BRATLIE, STEVEN A

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 04/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

078521

Applicant(s)

MONDANI, et al

Examiner

BRATLIE

Group Art Unit

3652

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____.
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-21 is/are pending in the application.
- ☐ Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-21 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 5
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Art Unit: 3652

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Behind every movement there is a great idea" brochure in view of German Publication #19805790. The above brochure was cited on applicant's IDS. This would appear to be an admission that the brochure is prior art. Applicants would appear to be in a better position than the examiner to find the effective date of the brochure (they found the brochure). The brochure would appear to disclose a substantially similar side shifter. The brochure does not disclose the specific fork positioner. German Publication #19805790 discloses the specific fork positioner. It would have been obvious to a mechanic with ordinary skill in the art at the time the invention was made to provide such a fork positioner to the primary reference. The motivation is the known use of equivalents.

Art Unit: 3652

4. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Kaup or German Publication #2716704 or Abels et al (Figs. 11 & 12) or Ellis Jr. in view of French Patent #2306931, British Patent #964161 and German Publication #19805790. Any one of the primary references disclose substantially similar structure including plural pistons in the frame member. Any one of the primary references lack pads, and the specific fork positioner. French Patent #2306931 element #21 and British Patent #964161 element #52 disclose the use of pads. German Publication #19805790 discloses the use of the specific fork positioner. It would have been obvious to a mechanic with ordinary skill in the art at the time the invention was made to provide these features to any one of the primary references. The motivation to provide a pad is to aid in transmitting movement. The motivation to use the fork positioner is the known use of equivalents.

5. Ronnblom is cited to show similar structures.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Bratlie whose telephone number is (703) 308-2669. The examiner can normally be reached on Monday through Thursday from 6:30 to 5:00. Friday is the examiner's day off.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-4177.

Bratlie/kl
April 3, 2003



STEVEN A. BRATLIE
PRIMARY EXAMINER